

EXCLUSIVE RIGHTS AGREEMENT

THIS EXCLUSIVE RIGHTS AGREEMENT ("Agreement") is made as of this ____ day of January, 2006 between the District of Columbia, a municipal corporation ("District"), and Howard University, a non-profit corporation ("Howard").

Recitals

1. The District holds United States Reservation 13 ("Reservation 13") in the District of Columbia pursuant to a Letter Transfer of Jurisdiction from the United States of America, acting through the General Services Administration, said Letter Transfer bearing date October 25, 2002, and filed of record in the Office of the Recorder of Deeds of the District of Columbia on October 30, 2002 as Instrument Number 2002125610.

2. Section 3 of the draft Master Plan for Public Reservation 13 Approval Act of 2002, effective April 11, 2003 (D.C. Law 14-300, D.C. Code § 10-1502), authorizes the construction of a hospital on a portion of Reservation 13.

3. Pursuant to the National Capital Medical Center Negotiation Emergency Resolution of 2003, Council Resolution No. 15-320, dated November 4, 2003, the Council declared the need to enter into discussions with Howard for the purpose of negotiating development of a new hospital on Reservation 13, and further declared that the District's existing health care infrastructure is inadequate in part because of the uneven distribution of hospitals in the District.

4. The parties each believe that the development of a hospital and related facilities on a portion of Reservation 13 will result in efficiencies in, and expansion of, quality, cost-effective health care services to medically, underserved populations in the Southeast Community of the District.

5. As a result of the discussions between the District and Howard, the parties have negotiated this Exclusive Rights Agreement ("Agreement") for the development of a hospital, medical office building and related research facilities on a portion of Reservation 13 identified as Sites B and C, consisting of approximately nine (9) acres (the "Property") under specific terms and conditions as stated herein.

Consequently, upon execution of this Agreement by Howard, the District is submitting this Agreement to the Council for its review and enactment of legislation to approve the Project, this Agreement, the Ground Lease, Grant Agreement and the exemption from the Certificate of Need process.

Now, therefore, in consideration of the foregoing premises and the mutual covenants set forth in this Agreement, the District and Howard agree as follows, intending to be legally bound:

I. INTERPRETATION

1.1. Definitions.

Commencement Date: The first date as of which the District has approved this Agreement and enacted legislation approving the Project, the Ground Lease, Grant Agreement and the exemption from the Certificate of Need process.

Council: The Council of the District of Columbia.

Development Agreement: as defined in Section 5.3

Financing Commitment. A written commitment from the Federal Housing Administration (“FHA”) to provide FHA mortgage insurance or other credit enhancement of the NCMC tax-exempt financing or other form of financing from another source approved by Howard to fund its share of the Project Costs described in 4.5.3.

Effective Date: The date this Agreement is executed by both Howard University and the District.

Grant Agreement: as defined in Section 5.1.

Ground Lease: as defined in Section 5.2.

Howard University Hospital or “HUH” means the division of Howard University responsible for the operation of the licensed acute care hospital located at 2041 Georgia Avenue, Washington, D.C. 20060. HUH does not include the Howard University College of Medicine, its faculty, scientists, clinical departments, institutes, centers and support services.

HUH Assets means the improvements, fixtures, equipment and inventory located at HUH and related to the operation of the hospital, including tangible and intangible property. The term “HUH Assets” does not include the real estate underlying HUH nor any tangible or intangible property of the Howard University College of Medicine.

HUH Liabilities means any debt incurred to purchase, acquire, maintain or improve, or secured by, the HUH Assets and any other Howard liabilities related to assets transferred to NCMC by Howard.

Improvements: as defined in Section 4.3.

Infrastructure Costs: as defined in Section 4.5.1.

Key Professionals: as defined in Section 4.3.2.

Mayor: the Mayor of the District of Columbia.

Medical Office Building: as defined in Section 2.1.4.

National Capital Medical Center: as defined in Section 4.3.1.

NCMC Hospital: as defined in Section 4.3.1.

Preliminary Plan: as defined in Section 4.3.

Project: as described in Section 4.3.

Project Costs: as defined in Section 4.5.

Project Documents: this Agreement, the Grant Agreement, Ground Lease and Development Agreement.

Project Steering Committee: as defined in Section 2.1.3.

Property: as described in Recital 5.

1.2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia (without reference to conflicts of laws principles).

1.3. Captions, Numberings and Headings. Captions, numberings and headings of Articles, Sections, Schedules and Exhibits in this Agreement are for convenience of reference only and shall not be considered in the interpretation of this Agreement.

1.4. Number; Gender. Whenever required by the context, the singular shall include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

1.5. Business Day. In the event that the date for performance of any obligation under this Agreement falls on other than a business day, then such obligation shall be performed on the next succeeding business day.

1.6. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

1.7. Severability. In the event that one or more of the provisions of this Agreement shall be held to be illegal, invalid or unenforceable, each such provision shall be deemed severable and the remaining provisions of this Agreement shall continue in full force and effect, unless this construction would operate as an undue hardship on the District or Developer or would constitute a substantial deviation from the general intent of the parties as reflected in this Agreement.

1.8. No Oral Modifications or Waivers. No modification of this Agreement shall be valid or effective unless the same is in writing and signed by the District and Howard. No

purported waiver of any of the provisions of this Agreement shall be valid or effective unless the same is in writing and signed by the party against whom it is sought to be enforced.

1.9. Schedules and Exhibits. All Schedules and Exhibits referenced in this Agreement are incorporated by this reference as if fully set forth in this Agreement.

1.10. Including. The word “including,” and variations thereof, shall mean “including without limitation.”

1.11. No Construction Against Drafter. This Agreement has been negotiated and prepared by the District and Howard and their respective attorneys and, should any provision of this Agreement require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one party.

II. PARTIES

2.1. Howard.

2.1.1. Howard acknowledges that its educational and health service qualifications and experience are a material consideration to the District in entering into this Agreement. Howard agrees that it shall not assign its rights in whole or in part under this Agreement, or delegate its obligations in whole or in part under this Agreement, without the approval of the District, except as provided herein or in the Project Documents. Notwithstanding the foregoing, it is expressly understood and agreed by the parties that Howard may assign its rights under this Agreement and the Project Documents to NCMC (the new corporation to be formed by Howard as described in Section 4.2.1.).

2.1.2. Howard acknowledges that the qualifications and experience of a project management firm and other key professionals to assist Howard in the development of the Property are a material consideration to the District entering into this Agreement. The Preliminary Plans shall identify the project management firm or key professionals selected by Howard to assist its management in the development of the Project as described in Section 4.3.2. Howard shall inform the Project Steering Team (described in Section 2.1.3) of its engagements of such firms and professionals upon their selection.

2.1.3. Howard acknowledges that Howard’s commitment to an open and transparent process for the development of the Project is a material consideration to the District in entering into this Agreement. Howard agrees that the three persons identified on Schedule 1 shall be Howard’s representatives to a joint project steering committee with representatives appointed by the District. (“Project Steering Committee”) that will be dedicated to the Project. The three persons identified on Schedule 2 shall be the District’s representatives to the Project Steering Committee. Each representative to the Project Steering Committee shall be bound to abide by the terms of this Agreement, including the confidentiality provisions.

- (i) The Project Steering Committee shall meet every thirty (30) days, with the first meeting to be held thirty days after the Commencement Date of this Agreement.
- (ii) The purposes of the Project Steering Committee will be to discuss the ongoing progress of the Project, to review any information relevant to the Project that may be requested by a representative of the Project Steering Committee (subject to the confidentiality provisions herein) and generally to provide an advisory forum for discussion of any issues relevant to the Project. Subject to the understandings set forth in Section 8.4, District acknowledges that the negotiation of contracts, hiring of personnel, development of proprietary business plans, financial projections and assumptions are sensitive, confidential and proprietary business activities and property of Howard and/or NCMC. The Project Steering Committee, the District and Howard shall not publish or otherwise disseminate to the public any document that is not designated as a final public document by the parties. Neither the District nor Howard or its representatives or professionals shall release any document nor information marked “Confidential”, “Proprietary”, “Draft” or a similar designation, without the written consent of the other party.
- (iii) Howard and the District may from time to time substitute new individuals for the representatives identified on Schedule 1 and Schedule 2.
- (iv) Upon formation of the new corporation the Project Steering Committee shall continue in operation but it shall be advisory to NCMC board of directors. The new corporation shall provide information to the Project Steering Team as agreed in this Section and the Project Documents.
- (v) Howard will share with the Project Steering Committee the FHA application and related documents. These documents will include proforma financial statements and other financial information and NCMC operating plans that Howard will provide to the FHA consultant engaged to perform the market and financial feasibility study for the Project.. The FHA feasibility study will be prepared by an independent accounting firm (with experience in conducting such studies for hospitals and approved by the FHA) in accordance with HUD Section 242 Program guidelines. The study will include an analysis of market need and competition, assumptions about demand, impact on other providers, hospital utilization, costs and revenues, and a financial forecast. The financial feasibility study will be prepared in accordance with AICPA guidelines. Howard shall also share with the Project Steering Committee any material interim report that the Project receives from FHA or its consultants and advisors.

2.1.4. Howard acknowledges that Howard’s commitment to develop a medical office building (“Medical Office Building”) on the Property is a material consideration to the District in entering into this Agreement and that it is the parties’ intent that the Medical Office

Building shall be developed concurrently with the NCMC Hospital, unless mutually agreed otherwise in the Project Documents. Howard may itself design, construct and develop the Medical Office Building, or it may sub-lease a portion of the Property to a third-party developer to develop, operate and maintain the Medical Office Building.

2.1.5. Howard acknowledges and agrees that Howard shall take all reasonable measures as shall be necessary to assure that all contracts entered into by Howard with respect to each major phase of the pre-construction and construction of the NCMC hospital, including contracts for architectural, engineering, and construction services (“Project Construction Contracts”), shall provide that at least 50% of the work in the aggregate under such Project Construction Contracts shall be awarded to local business enterprises, local small business enterprises, or local disadvantaged business enterprises, as such terms are defined in section 2 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1998, effective April 27, 1998 (D.C. Law 12-268; D.C. Official Code § 2-217.01); provided, that of the percentage of the work required by this section to be awarded to local business enterprises, local small business enterprises, or local disadvantaged business enterprises, 35% of the work shall be awarded to local small business enterprises or local disadvantaged business enterprises, as such terms are defined in section 2 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1998, effective April 27, 1998 (D.C. Law 12-268; D.C. Official Code § 2-217.01). Of the percentage of the work required by this section to be awarded to local small business enterprises or local disadvantaged business enterprises, not less than 20% of the work shall be awarded to local disadvantaged business enterprises.

2.1.6. Howard acknowledges that the District’s commitment to grant possession of the Property to Howard, or NCMC, as designated by Howard, as provided in this Agreement, is conditioned upon the District receiving written authority to convey such possession from the United States of America, through the General Services Administration (“GSA”). The District agrees to use its best efforts to endeavor to secure such written authority from GSA prior to the expiration of the Exclusivity Period (as defined in Section 3.2 below). The District shall commence such efforts and request such authority from GSA upon execution of this Agreement.

2.1.7. Howard acknowledges and agrees that except for the transfer of the Ground Lease, construction and installation of the Infrastructure, and the funds to be provided under the Grant Agreement as contemplated by this Agreement and the District’s legislation, and exclusive of any reimbursement agreements between NCMC and the District for medical and public health services, no subsidy or incentive will be required by Howard from the District in connection with its development of the NCMC Hospital (including performance of all obligations of Howard under the Development Agreement) and construction of Improvements. Nothing set forth in this Section 2.1.7 shall be deemed to prohibit or restrict Howard or third party developers, contractors or assigns from (i) applying for tax exempt financing in accordance with the usual rules and procedures of the District or (ii) applying for or receiving any subsidy or incentive that is generally available to be applied for as a matter-of-right for the Property and other properties in the District of Columbia that are similarly situated; or (iii) otherwise qualifying for any economic development program of the District of Columbia or the Federal government.

2.1.8. The parties acknowledge and agree that upon completion of the Project, the combined bed total of both the NCMC and Howard University Hospital will not exceed 482 beds (exclusive of any special bed requirements requested by the District), which is the current number of beds licensed at Howard University Hospital.

2.1.9. Subject to appropriate arrangements in the Grant Agreement between Howard and NCMC with respect to the transfer of HUH Assets and Liabilities to NCMC, and Howard obtaining any approvals or assignments required by any lenders or other parties with respect to the transfer of those HUH Assets to NCMC, Howard acknowledges and agrees that it will transfer certain HUH Assets and HUH Liabilities to NCMC, including without limitation, the HUH Level 1 Trauma Center and all associated services from Howard University Hospital to NCMC Hospital.

2.2. District.

2.2.1. The District shall have the right to assign this Agreement to any agency or instrumentality of the District.

2.2.2. All rights of the District under this Agreement shall be exercised by the Mayor or by such Persons (including the City Administrator) as the Mayor may designate from time to time.

2.2.3. The District acknowledges that its commitment to develop a new building in the area known as Square L of Reservation 13 to house key public health services for the District's residents is a material consideration to Howard entering into this Agreement. The District acknowledges that NCMC Hospital is not intended to be and shall not be the sole healthcare provider responsible for all uninsured, underinsured and/or publicly insured patients in the District. NCMC Hospital shall bear its proportionate share of the public health services for the underserved of the District as such obligation shall remain the shared obligation of all health care facilities in the District.

2.2.4. The District further acknowledges and agrees that the District's commitment to continue the D.C. Medicaid and Healthcare Alliance Program or an equivalent comprehensive health coverage program for District residents under 200% of the Federal poverty level and not otherwise eligible for Medicaid or Medicare coverage is critical to the long-term financial solvency of NCMC Hospital and a material consideration to Howard entering into this Agreement and undertaking the development of the Project.

2.2.5. The District acknowledges and agrees that a material consideration to Howard entering this Agreement is the development during the Exclusivity Period of a governance model, operational plan and non-recourse Financing Commitment for the Project that does not subject Howard to legal and financial exposure for the ongoing operations of NCMC. Howard's commitment to fund working capital deficits of NCMC shall be subject to negotiation in the Project Documents. Further, the District acknowledges and agrees that Howard's agreement to proceed with the Project is subject to Howard obtaining a Financing Commitment from the Federal Housing Authority or a comparable source to provide credit enhancement for the NCMC tax exempt financing to be arranged by Howard for the Project.

III. EXCLUSIVITY

3.1. Exclusivity. The District agrees that during the initial Exclusivity Period, the District shall negotiate exclusively with Howard with respect to (i) the development and construction of all Improvements and (ii) the disposition of the Property. Thereafter, the Exclusivity Period may be extended by the District while Howard applies for and awaits receipt of a Financing Commitment from the FHA or another source.

3.2. Exclusivity Period. The “Exclusivity Period” shall commence on the Effective Date and terminate on the earliest to occur of any of the following events unless extended under Section 3.3 hereunder:

3.2.1. One hundred eighty (180) calendar days after the Commencement Date of this Agreement, unless extended pursuant to Section 3.2.2 of this Agreement or by mutual written agreement of the District and Howard;

3.2.2. The District shall have the discretion to extend the Exclusivity Period for up to three additional one hundred eighty-five (185) calendar day periods after expiration of the initial Exclusivity Period described in 3.2.1, provided that Howard is proceeding in good faith to apply for the Financing Commitment. If the District grants a third extension, it shall provide Council with a report on the progress of the Project and the status of the financing application. District Council approval must be obtained for further extensions of the Exclusivity Period by the District beyond twenty-four (24) months from the Commencement Date.

3.2.3. Notice from a party to the other party that it is terminating this Agreement at any time after an Event of Default has occurred with respect to which the declaring party has given any notice expressly required under this Agreement and the receiving party has failed to cure such Event of Default within any cure period expressly provided for in this Agreement; and

3.2.4. Upon the occurrence of such other events as may be specifically provided for in this Agreement.

3.3. Termination of Exclusivity Period. If Howard receives a written Financing Commitment, Howard and/or NCMC shall proceed forthwith to close on the tax exempt financing and the parties shall proceed to the Construction Phase of the Project. If Howard’s application for a Financing Commitment is not approvable, either party may terminate this Agreement and the parties’ rights and obligations under the Project Documents shall terminate. In such event, the parties shall share equally the out-of-pocket Project Costs (as defined in Section 4.4.2) incurred since the Effective Date of the Agreement.

3.4. Preliminary Plan and Costs. If the Exclusivity Period ends or is terminated without the District’s and Howard’s execution of all Project Documents, then the District shall be prohibited from using any of the information, materials and other data produced by or for Howard in connection with this Project to develop the Improvements with any other party without Howard’s written approval in advance, which approval Howard may refuse for any reasonable business purpose. Notwithstanding the foregoing, if the District or its designee

reimburses Howard for its out-of-pocket Project Costs incurred since the Effective Date of the Agreement, Howard shall consent to District's use of the Project materials with another party.

IV. PLANNING SUBMISSIONS AND FUNDING PHASES

4.1. Project Phases. Development and funding of the Project will proceed in three phases: (1) Planning, (2) Pre-Construction and Financing and (3) Construction ("Phase" or collectively, "Phases"), in that order. This Agreement will govern the first Phase, the Planning Process, as hereinafter described. The parties agree to use good faith efforts to endeavor to complete the first Phase within six (6) months of the Commencement Date, the second Phase in no more than twenty-four (24) months of the Commencement Date and the last Phase within thirty (30) months of the conclusion of the Pre-Construction and Financing Phase.

4.2. District Approvals. Within sixty (60) days of the Effective Date of this Agreement, the parties shall finalize the terms of the Grant Agreement and Ground Lease in accordance with Sections 5.1 and 5.2 of this Agreement and the District shall submit this Agreement, the Grant Agreement, the Ground Lease and the Certificate of Need exemption request to Council for approval by legislative action.

4.3. Preliminary Plan. Within one hundred twenty (120) days of the Commencement Date of this Agreement, or such longer period as may be mutually agreed upon, Howard shall prepare for review by the District in accordance with this Article IV a preliminary plan ("Preliminary Plan") for the development of the Property and the design and construction of the hospital and Medical Office Building for physician offices (the "Improvements"). The goal of the Preliminary Plan shall be to reach consensus on the primary aspects of the development of a state-of-the-art teaching hospital and Medical Office Building at the Property (the "Project") for purpose of preparing the Development Agreement during the Planning Phase for execution upon receipt of the Financing Commitment. The Preliminary Plan shall include, at a minimum, the information described in sections 4.3.1 through 4.3.4 below.

4.3.1. NCMC Governance. A description of the proposed governance for the new independent non-profit corporation to be incorporated by Howard, including the representatives that the District may appoint to the board of directors. The new non-profit corporation will bear the name, "National Capital Medical Center" ("NCMC") and may, at the request of Howard, do business under a name that includes Howard University or Howard University College of Medicine. The purposes of the NCMC will be to (i) succeed to certain rights of Howard under this Agreement and subsequent agreements relating to the Project, (ii) subject to Section 2.1.9, own and operate all HUH Assets to be transferred by Howard to NCMC, (iii) own and manage the new hospital and related facilities to be developed pursuant to this Agreement and subsequent agreements (the new hospital and related facilities collectively the "NCMC Hospital") and (iv) coordinate programs, services, staff and funding between the Howard University Hospital and the NCMC Hospital campuses. The governance description shall include Howard's plan for NCMC Hospital becoming the primary teaching hospital for the Howard University College of Medicine ("HUCOM") and the terms and conditions of an Academic Affiliation Agreement between the HUCOM and NCMC.

4.3.2. **Key Professionals.** A description of Howard's plan for engaging a project manager and other Key Professionals to assist Howard in the successful completion of all phases of the development of NCMC Hospital, including but not limited to pre-construction planning; coordination of all design, architectural services, and engineering services, including all drawings and specifications; and development of requests for proposals for all necessary professionals and consultants. The request for proposals and selection of a project management firm and Key Professionals shall be subject to competitive bidding and such other terms and conditions as the parties agree in the Development Agreement. It is specifically understood and agreed that Howard shall inform the District in advance of any major partnerships or in the development, construction and management of NCMC Hospital or engagement of Key Professionals.

4.3.3. **Project Business Plan.** A business plan for the development of the Project, including an inventory of the construction programs and services, staffing and operating budget, a five (5) year pro forma financial statement for NCMC (including NCMC Hospital and HUH) and all other cost budgets that the District may reasonably require. The Business Plan shall include a detailed financing plan for securing all funds necessary for the development of the Project, including sources of funding and working capital for covering potential deficits prior to and in the first three years of operation of NCMC Hospital. The parties acknowledge and agree that the Business Plan shall provide that after its initial three years of operation, NCMC shall be expected to meet its capital and operating expense requirements of its hospital operations and that neither the District nor Howard shall have any obligation under this Agreement or the Project Documents to provide additional financial support to NCMC.

4.3.4. **Project Development Plan.**

- (i) ***Hospital Space Plan.*** A functional space program for the NCMC Hospital, including a description of the general space required by department and size, location and dimensions of (i) the hospital building and (ii) parking requirements.
- (ii) ***NCMC Hospital Services and Plan.*** A description of the initial uses and programs to be undertaken by the NCMC Hospital, including (i) inpatient care, (ii) trauma care, (iii) twenty-four (24) hour emergency services with triage services and referral to primary care and/or urgent care, (iv) twenty-four (24) hour urgent care, with Emergency Department triage, for non-emergency patients, (v) mental health and substance abuse intake, (vi) primary care services directly or through contract, (vii) ambulatory surgery, (viii) outpatient specialty services for all major specialties, (ix) outpatient diagnostic/radiology services, and (x) outpatient laboratory services.
- (A) A description of a public health operating plan for the NCMC Hospital, including (i) a plan for a continuum of care for specialty and diagnostic services; (ii) effective processes for follow-up with primary care providers, (iii) emergency and trauma transport, (iv) an electronic information data system for communication with

primary care providers, (v) a plan to reduce the number of unnecessary emergency room visits and ambulatory care sensitive admissions, (vi) a program to provide emergency health care for the underserved, regardless of ability to pay.

- (B) Subject to the District and Howard agreeing during the Planning Phase upon mutually acceptable reimbursement agreements for the District's payment of NCMC's operational costs related to the provision of services to patients in these units, NCMC will maintain (i) twenty (20) secure beds for correctional patients at NCMC Hospital and (ii) an inpatient psychiatric unit, including care for involuntary commitments, at HUH.
- (C) A policy for patient billing and collection practices for NCMC Hospital that is consistent with federal health care law, current best practices of charitable healthcare organizations and the IRS's community benefit standards. The policy shall include eligibility provisions and patient financial assistance policies for (i) uninsured and underinsured individuals with incomes up to 200% of the Federal Poverty Level ("FPL"), (ii) uninsured and underinsured individuals with incomes up to 400% of the FPL and (iii) individuals whose income may exceed such limits but whose medical expenses will deplete personal and family resources beyond a sustainable level. In addition, those policies shall include reasonable fee schedules for uninsured individuals eligible for financial assistance that are comparable to the fees paid by private third party payers. Howard acknowledges and agrees that the Business Plan, financial projections and governance documents for NCMC shall provide (1) for a reasonable volume of uncompensated care annually of not less than 3% of NCMC hospitals' operating costs; (2) that NCMC shall maintain records of the uncompensated care provided and submit an annual report to the District or its agency or instrumentality and make such document available for public inspection; (3) that NCMC shall publish its patient billing and collection practices policy in appropriate areas, including admissions, business office, Emergency Room and it shall be published in English, Spanish and any other language which at least 10% of the households in the service area speak; (4) that an individual written notice of NCMC's free care policy shall be made available to each person who seeks services from NCMC; (5) that the NCMC governing board shall be responsible for the review and approval of all collection policies and shall be responsible for monitoring collection practices of the hospital and (6) that such collection policies shall include payment plans that take into account the patient's and his or her family's income and other financial resources and obligations.

- (iii) ***HUH Services and Plan.*** A plan for relocation of programs and services currently provided by HUH to NCMC Hospital and the operating relationship between HUH and the NCMC Hospital, including the Level 1 Trauma center and all associated services to be transferred from HUH to NCMC Hospital.
- (iv) ***Community Participation.*** A plan describing a Community Participation Program which shall set forth, among other things, the community organization(s) with whom Howard proposes to discuss the Development Plan, a schedule for such discussions and type of information to be provided the community. This Community Participation Program shall encompass the period from the submission of the Community Participation Program until the issuance of the certificate of completion for the project. Howard shall document all community organization meetings held so as to provide a narrative description of the events of each meeting, including the concerns raised by the community organizations, and Howard's responses to those concerns. Howard's documentation of these community organization meetings shall be made available to the Project Steering Committee monthly until the completion of the NCMC Hospital project. Howard shall include a summary of each community organization meeting held during the preceding month with the documentation of each meeting. The documentation and summaries shall be designated as public documents.
- (v) ***Local Participation.*** An Affirmative Action Plan Memorandum of Understanding (LSDBE MOU") with the Office of Local Business Development and First Source Agreement with the District of Columbia Department of Employment Services for the Project Construction Contracts that incorporates the commitments described in Section 2.1.5 of this Agreement.
- (vi) ***Financial Statements.*** The Preliminary Plan documents shall include audited financial statements for HUH for its last three (3) fiscal years.

4.3.5. Within thirty (30) business days of receipt of the foregoing Preliminary Plan, the District shall promptly review the information described in Section 4.3.1 through 4.3.4. and forward to Howard such written comments as the District determines appropriate with respect to its approval of the Preliminary Plan.

4.3.6. Within thirty (30) business days after Howard's receipt of the District's written comments on the respective submissions, Howard shall complete revisions to the applicable portions to reflect the District's comments and shall re-submit the revised materials to the District. The revised materials shall include such information as may be reasonably necessary to enable the District to evaluate the refinement of the revised materials, and such other information and materials as the District may reasonably request. Should the District approve the terms and conditions of the Preliminary Plan, the District shall issue a written notice to Howard stating that it has granted final approval of the Preliminary Plan.

4.3.7. The specific process described in Sections 4.3 is not intended by the District and Howard to be exclusive. The District and Howard agree to work cooperatively and in good faith to complete the Preliminary Plan within one hundred eighty (180) days of the Commencement Date, which may include submission by Howard of additional materials and information not specifically described in such sections, and the provision by the District of additional comments, guidance and approvals/disapprovals not specifically described in such sections. Without limiting the generality of the foregoing, the District and Howard agree to adhere generally to the schedule of submissions described in sections 4.3.5 and 4.3.6. It is further understood that the parties may mutually agree to finalize certain sections of the Preliminary Plan during the Pre-Construction and Financing Phase.

4.4. Criteria for Submissions. All submissions to the District for its review and approval pursuant to Section 4.3 shall be in such form as the District may reasonably require, and include such number of copies as the District may reasonably require.

4.5. Project Costs.

4.5.1. Infrastructure Costs. The District will, subject to available appropriations, undertake responsibility, at its sole cost and expense through the Anacostia Waterfront Corporation (“AWC”), for demolition of existing improvements on the Property, clearing, construction and installation of public roads and utilities, and remediating or removing, transporting and disposing of soils and other materials from the Property containing hazardous substances (collectively, the “Infrastructure Costs”). Infrastructure Costs shall not be included in the Project Costs and shall be the sole responsibility of the District. Infrastructure Costs shall not include any special costs required for a hospital facility, but such costs will be included within the Project Costs, as hereinafter defined.

4.5.2. Project Costs. The District and Howard have developed preliminary cost projections for the NCMC Hospital and parking lot costs. “Project Costs” shall mean the reasonable and necessary costs reasonably required for all architectural, engineering, planning, permitting and construction work in connection with the NCMC Hospital, parking as required by governmental authority related thereto, and all reasonable and necessary medical equipment related to the NCMC Hospital (but excluding any additional parking structures beyond the hospital parking or any other improvements that may be constructed on the Property), including without limitation all drawings, plans, specifications, permits or other approvals relating thereto, all insurance and bonds, all costs of construction, including supervision thereof, telecommunications cabling, and any changes, together with all related fees and expenses, general conditions and contingences, professionals and consultants, equipment and financing costs incurred before or after the execution of this Agreement. Specifically, Project Costs shall include the following: the hospital facility; hospital parking garage; hospital medical equipment; architectural and engineering fees for the hospital and parking garage; furniture, fixtures and equipment for the hospital and parking garage; capital costs relating to the relocation of certain services from HUH to NCMC Hospital or the placement of certain public health services of NCMC at HUH, and administration for the hospital and parking garage.

It is specifically understood and agreed by the District and Howard that Project Costs shall not include any cost for the Medical Office Building or Research Building, including all

soft costs such as architectural and engineering fees, medical equipment, furniture, fixtures and equipment, and owner administration. Any cost associated with the development and construction of the Medical Office Building or Research Building shall be the sole responsibility of Howard.

4.5.3. ***Project Costs Funding.*** District and Howard agree that each party shall contribute fifty per cent (50%) of the Project Costs defined in section 4.5.2. Such funding obligation shall be in addition to the District's funding the Infrastructure Costs and undertaking to perform the Infrastructure development, and shall be subject to available appropriations.

- (i) The current estimate of the Project Costs (in 2007 dollars) is [\$381,936,000]. Based on that estimate, each party's 50% share of the Project Costs will be [\$190,968,000]. Each party will also reserve an additional 20% contingency of [\$21,200,000]. This contingency shall not be spent unless the total shared Project Costs exceed [\$381,936,000]. The final Project Costs' estimates will be based on the Project Costs described in the Development Agreement and the terms of the funding will be finalized in the Grant Agreement. Notwithstanding the foregoing, the District's share of Project Costs shall not exceed [\$212,168,000.]
- (ii) If the Guaranteed Maximum Price increases the Project Costs to an amount in excess of the estimate stated in (i) above, the District and Howard shall attempt to negotiate adjustments to the Preliminary Plans and/or the Development Agreement that are mutually acceptable to Howard and the District and that bring the Project Costs down to an amount funded by the District and the Howard on a 50/50 basis. If they are unable to agree upon such a plan, either party may terminate this Agreement.

V. COMPLETION AND EXECUTION OF PROJECT DOCUMENTATION

5.1. Grant Agreement.

5.1.1. Each party will provide its share of funds for Project Costs under Section 4.5.3 through the terms of a grant agreement ("Grant Agreement"), which will be subject to Council approval. Howard and the District agree to negotiate in good faith the form of such Grant Agreement between the District and Howard. The Grant Agreement will include the following provisions: (i) the Project will be funded fifty per cent (50%) by Howard and fifty per cent (50%) by the District, in accordance with the specific terms and conditions stated in Section 4.5.3, (ii) the District will release its share of funds for each Phase after Howard has made its share of funds readily available to the reasonable satisfaction of the District, and (iii) unless otherwise specified in the Grant Agreement, each party's share of funds will be deposited in and disbursed in accordance with the terms of an escrow or trust account to be established through the Grant Agreement. The Grant Agreement shall provide that Howard has no obligation to proceed with the Pre-Construction or Construction Phases as outlined in the Development Plan unless and until the District has adequate appropriations to fund the Grant Agreement as provided in this Agreement and the Grant Agreement. The Grant Agreement shall provide that

Howard is not obligated to fund the Project unless and until the terms of the Academic Affiliation Agreement between HUCOM and NCMC are approved by the NCMC board of trustees. The Grant Agreement shall acknowledge that a portion of Howard's share of the funding of the Project Costs may be contributed by third parties and/or Howard University donations of services, equipment and supplies, including HUH Assets transferred to the NCMC Hospital site. The Grant Agreement shall provide that other HUH Assets transferred to NCMC may be approved as a contribution by Howard, with the approval of the District. Further, the Grant Agreement shall specify that the value of such donations of services, equipment and supplies shall be determined and apportioned by mutual agreements between the parties.

5.1.2. The District will use good faith efforts to provide Howard an initial draft Grant Agreement on or before thirty (30) days after the Effective Date and the District and Howard shall endeavor in good faith to complete substantially the final Grant Agreement for execution by the parties and approval of Council within sixty (60) days of the Effective Date.

5.2. Ground Lease.

5.2.1. Howard and the District shall negotiate in good faith the form of a ground lease ("Ground Lease") of the Property between the District and Howard. The Ground Lease shall (i) have a term of ninety-nine (99) years, (ii) provide for annual rent of one dollar (\$1.00) payable in advance for the entire ninety-nine (99) year term, (iii) provide for construction of Improvements as may be required by the Project Documents, (iv) have a provision requiring District consent for sub-leasing or assigning the Ground Lease, (v) have provisions regarding mortgaging Howard's interest in the Ground Lease, (vi) have provisions regarding the District's right of first refusal and Howard's right of first refusal, (vii) have provisions regarding Howard's use of Property as an acute care hospital and related health care services; and (viii) include such other terms and provisions as may be usual and customary for ground lease transactions in the District of Columbia, or reasonably necessary or appropriate for the Property, provided that such other terms and provisions are consistent with the terms as may be required by this Agreement, the Development Agreement and the Grant Agreement.

5.2.2. The District shall use good faith efforts to provide to Howard an initial draft Ground Lease on or before the date that is thirty (30) days after the Effective Date of this Agreement. Howard and the District shall endeavor in good faith to complete substantially the form of the Ground Lease on or before the date that is sixty (60) days after the Effective Date of this Agreement, subject to such additional modifications to such form as may be reasonably necessary or appropriate based upon the final Development Agreement, the Financing Commitment and Grant Agreement.

5.3. Development Agreement.

5.3.1. Howard and the District shall negotiate in good faith the form of a development agreement ("Development Agreement") between the District and Howard, governing the design, development, funding and construction of the Improvements from Pre-Construction and Financing phase through the Construction phase. The Development Agreement shall (i) include such terms as may be required by this Agreement, the Preliminary Plan and the Grant Agreement; (ii) state that Howard's obligation to proceed with the

development of the Project is contingent upon receipt of a Financing Commitment and (iii) such other terms as may be reasonably necessary or appropriate for the design, development, funding and construction of the Project during the period that commences at Pre-Construction and Financing phase and expires upon completion of Construction, provided that such other terms are consistent with the terms required by this Agreement, the Preliminary Plan, the Grant Agreement and the Ground Lease.

5.3.2. The Development Agreement shall incorporate by reference the LSDBE MOU and First Source Agreement prepared in accordance with Section 4.3.4(v) hereunder and shall require Howard and its assigns to comply with all applicable laws, regulations, and ordinances relating to the construction of NCMC Hospital in the District and any Federal financial assistance relating to it, including without limitation, any community participation, affirmative action, District resident hiring goals, Office of Local Business Development and First Source requirements.

5.3.3. The District shall use good faith efforts to provide to Howard an initial draft of the Development Agreement on or before the date that is one hundred twenty (120) days after the Commencement Date of this Agreement. Howard and the District shall endeavor in good faith to complete the Development Agreement on or before the date that is one hundred eighty (180) days after the Commencement Date.

VI. CONDITIONS PRECEDENT TO PROCEEDING TO CONSTRUCTION PHASE

6.1. District Legislation. Howard's obligation to proceed with this Project is contingent upon the Council's adoption of legislation approving the Ground Lease, Grant Agreement and exemption of the Project from the Certification of Need requirements. The parties shall use their respective best efforts to prepare the necessary documents and seek Council's approval of such legislation within ninety (90) days of the Effective Date of this Agreement. If such approval is not forthcoming by the expiration of the initial Exclusivity Period, this Agreement shall terminate.

6.2. Construction. The Project Documents shall provide that each party's obligation to proceed to the Construction phase shall be conditioned on the satisfaction of each of the following conditions, any of which may be waived by each party in writing:

6.2.1. The Planning phase shall have been completed pursuant to this Agreement and the Project Documents approved by the District and Howard's board of trustees.

6.2.2. FHA or another suitable lender shall issue a written Financing Commitment to provide mortgage insurance or other credit enhancement of the tax-exempt financing of Howard's share of the Project Costs described in 4.5.3.

6.2.3. Adoption of legislation by the District exempting the Improvements from the District's Certificate of Need process and approving the Grant Agreement and Ground Lease.

6.2.4. There shall exist no default on the part of either party of any of its material obligations under this Agreement.

6.2.5. All representations and warranties of each party under this Agreement shall remain true and correct in all material respects.

6.2.6. There shall exist no order of any court that is binding upon a party and that prohibits that party from consummating the Project Documents or proceeding with any material aspect of the Project.

6.2.7. GSA's approval of the sublease of the District's interest in the Property to Howard and Howard's grant of a mortgage on the Property to the FHA in connection with the tax-exempt financing for NCMC Hospital.

VII. REPRESENTATIONS AND WARRANTIES

7.1. Howard. Howard hereby represents and warrants to the District as follows:

7.1.1. Howard is a non-profit corporation duly organized, validly existing and in good standing under the laws of the District of Columbia, duly qualified to conduct business in the District of Columbia, and has the power and authority to conduct the business in which it is currently engaged.

7.1.2. Howard (i) has the power and authority to execute, deliver and perform its obligations under this Agreement, and (ii) has taken all necessary action to authorize the execution, delivery and performance of this Agreement.

7.1.3. No consent or authorization of, or filing with, any person (including any governmental authority), which has not been obtained, is required in connection with the execution, delivery and performance of this Agreement by Howard,

7.1.4. This Agreement has been duly executed and delivered by each of Howard, and constitutes the legal, valid and binding obligation of Howard, enforceable against it in accordance with its terms.

7.1.5. The execution, delivery and performance by Howard of this Agreement will not violate any requirement of law or result in a breach of any contractual obligation to which Howard is a party.

7.1.6. No litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to the best knowledge of Howard, threatened by or against Howard which, if adversely determined, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Howard or its ability to perform its obligations under this Agreement.

7.2. The District. The District hereby represents and warrants to Howard as follows:

7.2.1. The District (i) has the power and authority to execute, deliver and perform its obligations under this Agreement, and (ii) has taken all necessary action to authorize the execution, delivery and performance of this Agreement.

7.2.2. No consent or authorization of, or filing with, any person (including any governmental authority), which has not been obtained, is required in connection with the execution, delivery and performance of this Agreement by the District.

7.2.3. This Agreement has been duly executed and delivered by the District, and constitutes the legal, valid and binding obligation of the District, enforceable against it in accordance with its terms...

7.2.4. The execution, delivery and performance by the District of this Agreement will not violate any requirement of law, require any approval of Council (other than the approval of this Agreement, the Grant Agreement, Ground Lease and the exemption from the Certificate of Need process) or result in a breach of any contractual obligation to which the District is a party.

7.2.5. No litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to the best knowledge of the District, threatened by or against the District which, if adversely determined, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the District's ability to perform its obligations under this Agreement.

7.2.6. District shall use its best efforts to budget for, seek appropriation for and fund its financial commitments to this Project as set forth in Sections 2.2.3, 2.2.4, 4.5.1 and 4.5.3. This representation and warranty shall be continuing through the Project completion.

VIII. MISCELLANEOUS

8.1. Events of Default.

Each of the following shall constitute an "Event of Default"

8.1.1. Any party shall fail to perform any obligation required under this Agreement,

8.1.2. A party ceases to work on a good faith basis appropriate for the scale and type of Project and in a manner sufficient to accomplish completion of its obligations within the applicable times required under this Agreement; or

8.1.3. Any representation or warranty of Howard made in this Agreement shall fail to be correct in any material respect on the date made.

8.1.4. Upon the occurrence of any Event of Default specified in Section 8.1, and the failure of the defaulting party to cure such Event of Default within thirty (30) days of receipt of written notice of such Event of Default from the other party (or if such Event of Default cannot reasonably be cured within such thirty (30) day period, then within such additional period of time as may be reasonable necessary to cure such Event of Default, provided that the defaulting party commences such cure in the initial thirty (30) days and thereafter diligently pursues such cure), the other party shall have the right (a) to terminate the Exclusivity Period by written notice to defaulting party, in which event all obligations and liabilities of the other party

under this Agreement shall thereupon terminate other than as provided in Sections 8.3 and 8.11; and/or (b) to pursue such other rights and remedies as may be available under this Agreement and applicable law.

8.2. Recitals. The Recitals set forth above are incorporated herein by reference.

8.3. Binding Effect. Upon its execution by the parties, this Agreement shall be binding upon and inure to the benefit of the District and Howard and their permitted successors and assigns.

8.4. Confidentiality. Except as set forth below, each party shall maintain as confidential and shall not publicly disclose the terms of this Agreement and any Project Documents without the advance written consent of the President of Howard or the District's Mayor or the Mayor's designee. Notwithstanding the foregoing, the parties agree that the final, Project Documents, upon execution, are subject to public disclosure. Each party shall maintain as confidential and shall not publicly disclose the financial information provided by either party. The foregoing shall not prohibit (i) disclosure to the extent required under applicable law or valid legal process, (ii) disclosure, on a need-to-know basis, to the employees, architects, attorneys and other professionals and consultants providing services in connection with the Project, and to prospective lenders and investors, provided that such parties acknowledge the confidentiality of such terms and agree not to disclose such terms except as permitted under this Section 8.4, and (iii) recordation of a Memorandum of Ground Lease in the Land Records of the District of Columbia. Any press release or other public statement that either party proposes to issue pursuant to the foregoing sentence shall be subject to the prior review and approval by each party, such approval not to be unreasonably withheld.

8.5. Waiver of Jury Trial; Jurisdiction. The District and Howard each hereby waive any right to jury trial in connection with any suit, action, proceeding or claim relating to this Agreement or to the transactions contemplated by this Agreement. Any suit, action, proceeding or claim relating to this Agreement or the transactions contemplated by this Agreement shall be brought exclusively in the United States District Court for the District of Columbia or the Superior Court for the District of Columbia, and the District and Howard agree that such courts are the most convenient forum for resolution of any such action and further agree to submit to the jurisdiction of such courts and waive any right to object to venue in such courts.

8.6. No Recordation. Howard shall not record this Agreement, or any memorandum or notice of this Agreement, in any public records.

8.7. Notices. Notices and other communications required or permitted under this Agreement shall be in writing and delivered by hand against receipt or sent by recognized overnight delivery service, by certified or registered mail, postage prepaid, with return receipt requested or by telecopy. All notices shall be addressed as follows:

If to the District: The City Administrator
 1350 Pennsylvania Avenue, N.W.
 Washington, D.C. 20005

Attention: Robert C. Bobb
Telecopy: 202/727-9878

with a copy to: Office of the Attorney General for the District of Columbia
Commercial Divisions
441 4th Street, N.W., Suite 600 North
Washington D.C. 2001
Attention: Charles Barbera, Deputy Attorney General
Telecopy: 202/727-6014

If to Howard: Howard University
2400 6th Street, N.W., Suite 300
Washington, D. C. 20059
Attention: President H. Patrick Swygert
Telecopy: (202)

with a copy to: Norma B. Leftwich, Esquire
Office of the General Counsel
Howard University
2400 6th Street, N.W. Suite 321
Washington, D.C. 20059
Telecopy: (202) 806-6357

or to such other addresses as may be designated by proper notice. Notices shall be deemed to be effective upon receipt (or refusal thereof) if personally delivered, sent by recognized overnight delivery service, or sent by certified or registered mail, postage prepaid, with return receipt requested, or upon electronically verified transmission, if such delivery is by telecopy.

8.8. Time of Essence. Time is of the essence with respect to the performance by the District and Guarantors of their obligations under this Agreement.

8.9. Anti-Deficiency Provision.

8.9.1. The District and Howard acknowledge and agree that the obligations of the District to fulfill financial obligations of any kind pursuant to any and all provisions of this Agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein to which the District is a party, are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1351, (ii) the D.C. Official Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act, regardless of whether a particular obligation has been expressly so conditioned. The District agrees to exercise all lawful and available authority to satisfy any financial obligations of the District that may arise under this Agreement; however, since funds are appropriated annually by Congress on a fiscal year basis, and since funds have not yet been appropriated for the undertakings contemplated herein, the District's legal liability for the payment of any costs shall not arise unless and until appropriations for such costs are approved for the applicable fiscal year by Congress (nor shall such liability arise if, despite the

District's compliance with Section 8.9.1, a request for such appropriations is excluded from the budget submitted by the Council to Congress for the applicable fiscal year). The District makes no representation or assurance that Congress will grant the authorizations and appropriations necessary for the District to perform its financial obligations under this Agreement.

8.9.2. During the term of this Agreement, the Mayor or other appropriate official shall for each fiscal period include in the budget application submitted to the Council the amount necessary to fund the District's obligations hereunder for such fiscal period. Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of the District shall have any personal liability in connection with the breach of the provisions of this Section 8.9.2 or in the event of a default by the District under this Section 8.9.2.

8.9.3. This Agreement shall not constitute an indebtedness of the District nor shall it constitute an obligation for which the District is obligated to levy or pledge any form of taxation or for which the District has levied or pledged any form of taxation.

IN ACCORDANCE WITH §446 OF THE HOME RULE ACT, D.C. OFFICIAL CODE §1-204.46, NO DISTRICT OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THIS AGREEMENT UNLESS SUCH AMOUNT HAS BEEN APPROVED AND APPROPRIATED BY ACT OF CONGRESS.

8.10. Agents and Representatives. No person other than the parties to this Agreement, and the permitted assignees of such parties, shall have any liability or obligation under this Agreement. Without limiting the generality of the foregoing, Howard agrees that no consultant, contractor, agent or attorney engaged by the District in connection with this Agreement or the transactions contemplated by this Agreement shall have any liability or obligation to Howard under this Agreement.

8.11. Survival. The parties acknowledge and agree that the duties and obligations set forth in Sections 3.4, 8.4 and 8.5 shall survive the expiration or termination of this Agreement for any reason.

IN WITNESS WHEREOF, the District and Howard have executed this Agreement.

DISTRICT OF COLUMBIA

By: Anthony A. Williams

Approved for legal sufficiency:

HOWARD UNIVERSITY

By: Matrick Surgen

Schedules and Exhibits:

Schedule 1: Howard representatives to Project Steering Committee

Schedule 2: District representatives to Project Steering Committee

Schedule 1

Howard Representatives to Project Steering Committee

Senior Vice President Hassan Minor, Ph.D., or his designee

Senior Vice President, Chief Financial Officer and Treasurer Sidney Evans, or his designee

Senior Vice President for Health Sciences Victor Scott, MD, or his designee

Schedule 2

District Representatives to Project Steering Committee

City Administrator Robert C. Bobb, or his designee

Department of Health Director Gregg A. Pane, or his designee

Anacostia Waterfront Corporation President, Adrian Washington, or his designee